

Panaji, 19th July, 2007 (Ashada 28, 1929)

SERIES II No. 16



# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

Note:- There are four Extraordinary issues to the Official Gazette, Series II, No. 15 dated 12-7-2007 as follows:-

- 1) Extraordinary dated 13-7-2007 from pages 617 to 630 regarding Order from Department of Urban Development (Directorate of Municipal Administration).
- 2) Extraordinary (No. 2) dated 16-7-2007 from pages 631 to 632 regarding Notification from Department of Elections (Office of the Chief Electoral Officer).
- 3) Extraordinary (No. 3) dated 17-7-2007 from pages 633 to 636 regarding Notifications from Department of Revenue.
- 4) Extraordinary (No. 4) dated 17-7-2007 from pages 637 to 638 regarding Notification from Goa Legislature Secretariat.

### GOVERNMENT OF GOA

#### Department of Agriculture

Directorate of Agriculture

#### Notification

No. 3/4/Agron/3-18/2007-08/D.Agr/124

Government is pleased to constitute a State Level Committee for launching of Campaign for ensuing 100% Seed Treatment in important crops during Kharif 2007 season with following members Chaired by Secretary (Agriculture) as given under:-

- |   |                    |
|---|--------------------|
| 1. Secretary (Agriculture)                | - Chairman         |
| 2. Plant Protection Officer, CIPMC, Vasco | - Member Secretary |
| 3. Director of Agriculture                | - Member           |
| 4. Director, ICAR, Ela                    | - Member           |
| 5. Director of Education, Goa             | - Member           |
| 6. Training Organizer, KVK (North)        | - Member           |
| 7. Training Organizer, KVK (South)        | - Member           |
| 8. Director, All India Radio              | - Member           |
| 9. Director, Doordarshan                  | - Member           |
| 10. Dy. Director of Agriculture (Agron)   | - Member           |

The Committee is to discharge the following functions:-

1. To co-ordinate the 100% Seed Treatment Campaign.
2. Report the achievements to Government of India.

By order and in the name of the Governor of Goa.

P. P. Kumbhare, Director of Agriculture and ex officio Joint Secretary.

Tonca-Caranzalem, 5th July, 2007.

#### Notification

No. 3/4/Agron/3-18/2007-08/D.Agr/125

Government is pleased to constitute a Taluka Level Committee for launching of Campaign for ensuing 100% Seed Treatment in important crops during Kharif 2007 season with following members:-

- |  |                    |
|--|--------------------|
| 1. Dy. Director of Agriculture (Agron)/PP        | - Chairman         |
| 2. Zonal Agricultural Officer                    | - Member Secretary |
| 3. Representative of CIPMC, Vasco                | - Member           |
| 4. Representative of Lead Village Panchayat (VP) | - Member           |
| 5. Representative of progressive farmer-         | Member             |

The Committee is to discharge the following functions:-

1. To co-ordinate the 100% Seed Treatment Campaign at Taluka Level.
2. Report to the State Level Committee and act as per directives given from time to time.

By order and in the name of the Governor of Goa.

P. P. Kumbhare, Director of Agriculture and ex officio Joint Secretary.

Tonca-Caranzalem, 5th July, 2007.

## Department of Education, Art &amp; Culture

Directorate of Art &amp; Culture

**Order**

No. DAC/7/RGKM/MS/2007/781

In exercise of powers conferred under clause (7) of the Constitution of Rajiv Gandhi Kala Mandir, Ponda, the Government is pleased to appoint the Dy. Collector and Sub Divisional Magistrate, Ponda as Member Secretary of Rajiv Gandhi Kala Mandir, Ponda with immediate effect and until further orders.

This supersedes all the earlier orders.

By order and in the name of the Governor of Goa.

*Prasad Lolayekar*, Director of Art & Culture & ex officio Joint Secretary.

Panaji, 6th July, 2007.

## Department of Home

Home — General Division

**Order**

No. 2/24/2006-HD(G)

In pursuance of sub-rule (8) of Rule 419-A of the Indian Telegraph Rules, 1951 (hereinafter called as the "said Rules") the Government of Goa is pleased to constitute a Review Committee, consisting of the following for the purpose of the said Rules, with immediate effect:

- |                                       |            |
|---------------------------------------|------------|
| 1) Chief Secretary                    | — Chairman |
| 2) Secretary (Law)                    | — Member   |
| 3) Secretary (General Administration) | — Member   |

By order and in the name of the Governor of Goa.

*Ms. Biju R. Naik*, Under Secretary (Home).

Panaji, 5th July, 2007.

## Department of Labour

**Notification**

No. 28/18/2007-LAB/626

The following Award passed by the Industrial Tribunal of Goa at Panaji-Goa on 07-06-2007 in reference No. IT/34/92 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Hanumant T. Toraskar*, Under Secretary (Labour).

Porvorim, 29th June, 2007.

## IN THE INDUSTRIAL TRIBUNAL-

-CUM-LABOUR COURT-I

PANAJI GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/34/92

Sagun B. Naik  
Nagzari, Curti,  
Ponda Goa.

... Workman/Party-I

V/s

M/s. Ponda Consumers  
Co-operative Society Ltd.,  
Ponda Goa.

... Employer/Party-II

Workman/Party-I – represented by Adv. P. J. Kamat.

Employer/Party-II – represented by Adv. A. V. Nigalye.

Panaji, Dated: 7-6-2007.

**AWARD**

(Passed on this 7th day of June, 2007)

1. This is a reference under Sec. 10(2) of Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

2. Facts giving rise to the present reference, stated in brief, are as follows:

3. The Government of Goa in exercise of powers conferred on it under sub-section 2 of Section 10 of the said Act, 1947, by order dated 28-4-1992 has referred to this Tribunal following dispute for adjudication.

"(1) Whether Shri Sagun B. Naik, Weighman, employed by M/s. Ponda Consumer's Co-operative Society Ltd., Ponda, is entitled for wages for the period commencing from the date of his termination of services i.e. with effect from 9-9-81 to the date of joining the duties.

(2) If not, to what relief the workman is entitled? "

4. In response to notice, both the parties appeared in this Tribunal. The Party-I presented his Claim Statement on 20-7-92. It is at Exb. 4. It appears from the Claim Statement that the Party-II is a Consumer Society dealing with business of sale of goods, controlled and uncontrolled. It is an establishment as defined under provisions of Goa, Daman & Diu Shops & Establishments Act, 1973, and the Rules framed thereunder. The Party-II employed the Party-I as a Weighman w.e.f. 15-8-1965 without specifying service conditions. Managing Committee members of the Party-II started harassing the Party-I since the year 1980 due to some misunderstandings. The Party-II issued a circular in the month of December, 1980 and called upon its all employees to furnish indemnity bonds of Rs. 5000/- each, with two sureties. In spite of repeated requests the Party-II did not supply to the Party-I the circular where under the Party-II called upon its all employees to furnish such Indemnity bonds. The Party-I did not furnish the Indemnity Bond, as a result, the Party-II issued show

cause notice on 17-3-1981 and called upon the Party-I to execute indemnity bond within seven days from receipt of the notice. Even thereafter, the Party-I did not furnish Indemnity bond with two sureties. There was no service condition that the Weighman, Branch Assistant or Helper should furnish such indemnity bond of Rs. 5000/- each, with two sureties. The Party-II by calling upon its employees to furnish such Indemnity bonds with sureties has effected change in service condition without notice as provided u/s 9-A of the said Act, 1947. If such bond with sureties is not furnished, that cannot be a ground of misconduct. The Party-II by its order dated 6-6-1981 informed the Party-I that his services shall stand terminated w.e.f. 6-7-1981 on the ground that the Party-I committed disobedience of order issued by the Party-II. The Party-I by giving reply on 3-7-1981, informed the Party-II that it is not necessary for him to furnish the Indemnity bond with sureties. The Party-II in turn, stayed effect and operation of its order dated 6-6-1981. The Party-II again by its notice dated 5-8-1981 called upon the Party-I to show cause within 3 days as to why his services should not be terminated for misconduct/disobedience of its order. The Party-I gave reply to this notice also. The Party-II by its letter dated 8-8-1981 terminated services of the Party-I w.e.f. 9-9-1981 on the ground that Party-I has committed disobedience of its order. The Party-I filed Appeal against termination of his services before prescribed Authority under Goa, Daman & Diu Shops & Establishments Act, 1973. Both parties arrived at settlement during pendency of the Appeal. The Party-II agreed to reinstate the Party-I in service on condition that the Party-I should execute Indemnity bond. Both parties agreed to refer to the Tribunal, dispute regarding wages w.e.f. 9-9-1981 till the date of reinstatement, for adjudication. Thereafter, the Government of Goa has made reference to this Tribunal as stated earlier. The Party-I has prayed for declaration that the action of the Party-II in terminating his services is illegal and unjustified, and for full backwages with other benefits.

5. The Party-II combated the claim of the Party-I by filing its written statement on 15-9-1992 at Exb. 5. According to the Party-II, it is not an industry as defined u/s 2(j) of the said Act, 1947. Dispute between the parties is not an industrial dispute within the meaning and scope of Sec. 2(k) of the said Act, 1947. Further, it appears from the written statement that the Party-II is a Co-operative Society duly registered under the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa. Accounts of the Party-II are audited by Statutory Auditor appointed by the Registrar for Co-operative Societies. The Auditor in audit report pertaining to the year 1977-1978 passed remark that, security bond each of Rs. 2000/- obtained from its employees are of very less amount. He directed the Party-II to increase the amount of bond. Therefore, the Managing Committee of the Party-II passed resolution. In compliance with the said resolution the Party-II by its notice dated 14-12-1980 called upon its all employees to furnish Indemnity bond of Rs. 5000/- each with sureties till 20-12-1980. The Party-I, in spite of giving sufficient

opportunities, did not comply with the notice. The Party-II in meeting of its Managing Committee passed resolution and terminated services of the Party-I. Accordingly, Order of termination dated 6-6-1981 was issued informing the Party-I that his services shall stand terminated from 6-7-1981. The Party-II in meeting of its Managing Committee held on 30-6-1981, considering fact that the Party-I is its old employee, decided to give one more opportunity to the Party-I to furnish indemnity bond. The Party-II kept its order of termination dated 6-6-1981 in abeyance for a period of 30 days. Even then, the Party-I did not furnish the Indemnity bond which forced the Party-II in terminating the services of the Party-I w.e.f. 9-9-1981 by issuing fresh termination order dated 7-8-1981. Thereafter the Party-I availed remedy of filing appeal before the Prescribed Authority under the Goa, Daman & Diu Shops & Establishments Act, 1973. Though there was settlement between the parties, the Prescribed Authority had no jurisdiction to take the settlement on record and to dispose of the Appeal in terms of the settlement. The reference which is on basis of the settlement is bad in law. The reference is not maintainable. Therefore, the Party-II has requested to adjudicate the reference in its favour.

6. The Party-I has filed his Rejoinder on 15-9-1992 at Exb. 6. At the very outset he has denied all contentions which are raised by the Party-II in its written statement and which are adverse to him. He further pleaded that the Party-II did not conduct an inquiry as required u/s 39 of the Goa, Daman & Diu Shops & Establishments Act, 1973 and the Rules framed thereunder. The action of the Party-II in terminating his services is non-est. He reiterated that he is entitled to full back wages.

7. On basis of pleadings, the then learned Presiding Officer framed issues at Exb. 7. The issues are re-cast by me at Exb. 10. The parties did not lead additional evidence after recasting of the issues. The re-cast issues are as follows.

1. Whether the Party-II is an Industry as defined u/s 2(j) of the Industrial Disputes Act, 1947 ?
2. Whether the dispute between the parties is an industrial dispute as defined u/s 2(k) of the Industrial Disputes Act, 1947 ?
3. Whether the dispute is maintainable?
4. Whether the Party-I is entitled to any relief as prayed for?
5. What Award?
8. My findings on the above issues are as follows:

Issue No. 1:	In the affirmative
Issue No. 2:	In the affirmative
Issue No. 3:	In the affirmative
Issue No. 4:	In the affirmative
Issue No. 5:	Entitled to wages from the date of termination of services till the date of joining the duties.
Issue No. 6:	As per final order.

## REASONS

9. *Issue No. 1:-* Section 2(j) of the said Act, 1947 defines industry as follows:

*“industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen;*

10. In the present case, the Party-II is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960, which is applicable to the State of Goa also. The Party-II is dealing with business of selling goods controlled as well as un-controlled. This fact is fairly admitted by Learned Advocate of Party-II during course of his argument. In view of this admitted position and considering provision contained in Sec. 2(j) of the said Act, 1947, it can safely be held that the Party-II is an industry. I, therefore, answer the issue in affirmative.

11. *Issue No. 2:-* Section 2(k) of the said Act, 1947, defines “industrial dispute” as follows:

*“industrial dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;*

12. The Party-II is an employee as Weighman of the Party-I which is registered under the Maharashtra Co-operative Societies Act, 1960. There is a relationship between Party-I and Party-II as employee/workman and Employer, respectively. The Party-I is terminated from services by the Party-II w.e.f. 9-9-1981. In compliance with settlement which is arrived at between the parties before the Commissioner (Labour), the Party-I is reinstated in service w.e.f. 1-1-1992. The Party-I has claimed that his termination from service which is w.e.f. 9-9-1981 is not legal and justified. The dispute which is referred to this Tribunal for adjudication is as to whether the Party-I is entitled to wages for the period from commencing from the date of his termination of services to the date of joining the duties. The dispute relates to employment of the Party-I with the Party-II. I therefore, considering provisions contained in Sec. 2(k) of the said Act, 1947 hold that the dispute between the parties is industrial dispute. My answer to the issue is in affirmative.

13. *Issue No. 3:-* The Party-I after his termination from service by the Party-II w.e.f. 9-9-1981 filed Appeal before the Commissioner (Labour) as provided u/s 40(1)(b) of the Goa, Daman & Diu Shops & Establishments Act, 1973. A settlement was arrived at between the parties during the course of the Appeal. Xerox copy of the terms of settlement is at Exb. W-15. Under this settlement the Party-II agreed to allow the Party-I to join duties on the same post from where his services were terminated.

So far dispute in respect to Payment of Wages of the interim period from the date of termination to the date of rejoining of the duties is concerned, the parties agreed to refer it for adjudication to the Industrial Tribunal. On basis of this settlement the Government of Goa has made the present reference to this Tribunal as stated earlier.

14. Learned Advocate appearing on behalf of Party-I argued that the reference to the Tribunal is on basis of settlement which is arrived at between the parties during pendency of the appeal before the Commissioner (Labour). Once both the parties agreed by way of settlement to refer the dispute to the Industrial Tribunal, the Party-II cannot take summersault and say that the reference/dispute is not maintainable. He asserted that in view of the settlement between the parties, the reference is maintainable. In support of his argument, he relied upon decision given by the Hon'ble High Court of Madhya Pradesh in the case of *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd., Petitioner v. The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur and others, Respondents, reported in 1975 Lab I.C. 1409*. In this reported case, the workmen Ramprasad and his wife Shrimati Jankibai were servants of the Petitioner - Co-operative Society. They were charged with acts of misconduct. The Society appointed Enquiry Officer who found them guilty. Therefore, their services were terminated by the Society. The question of their dismissal was taken up by the Third Respondent. The Government by order dated 6-4-1972 referred the question for adjudication by the Industrial Tribunal who in turn ordered reinstatement of the workmen in service with full backwages and other dues w.e.f. 5-5-1971. Section 55 of Madhya Pradesh Co-operative Societies Act provides that, where there is a dispute including the dispute regarding terms of employment, working condition and disciplinary action taken by the Society between Society and its employees, decision of the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall be binding on the society and its employees. The Hon'ble High Court of Madhya Pradesh held that employees of Co-operative Societies engaged in industrial activities are to be governed by the Industrial Disputes Act and not by Sec. 55 of the Madhya Pradesh Co-operative Societies Act in view of the amendment of the Industrial Disputes Act in 1965 and in 1971.

15. The Learned Advocate of Party-II in reply to the argument advanced by the Learned Advocate of Party-I submitted that Commissioner (Labour) is appointed as an Authority to hear and decide appeals arising out of termination of services u/s 40 of the Goa, Daman & Diu Shops & Establishments Act, 1973. The Authority is empowered to hear and decide appeal arising out of the termination of services of employee's u/s 39 of the said Act, 1973. Termination of services of the Party-I is as per the said provisions. Against any decision of the Authority, second appeal lies to the Labour Court

constituted u/s 7 of the I. D. Act, 1947. By way of entering into the settlement, the parties cannot confer jurisdiction on the Industrial Tribunal and which is vested with the said Authority and then with the Labour Court. Therefore, according to him, the reference is not maintainable in the Industrial Tribunal. To substantiate his argument, he relied upon observations made by the Hon'ble Supreme Court in case of *Agra Dist. Co-op. Bank Ltd., Appellant v. Prescribed Authority, Labour Court, U.P. and others, Respondents reported in AIR 2001 S.C. 2396*. The observation made by the Hon'ble Supreme Court and which are highlighted in para No.7 of the Judgment are reproduced as follows:

*"The position is that when a question of employment arises certainly, it cannot be said that the doors of the Labour Court are shut. It is possible that in certain cases Section 70 of the U.P. Co-operative Societies Act may be attracted. If parties avail of a remedy in one of the jurisdictions, that proceeding must be pursued to its logical end and should not be given up in the middle and start another proceeding under another Enactment. That would be a wholesome rule to be followed rather than to state that one or the other tribunal has no jurisdiction"*

16. In the above reported case, Respondents No. 2 and 3 were selected by Selection Committee constituted in terms of U.P Co-operative Societies Employees service Regulation, 1975 as in force then as clerks/cashiers. Appointment letters were issued to them on 28-4-1980 and they also reported to their duty. By resolution made on 9-5-1981 the said recruitment was cancelled. Respondents No. 2 and 3 filed writ petition before the Hon'ble High Court challenging the action of the Managing Committee of the Agra Dist. Co-operative Bank Ltd. The High Court declined to interfere with the action and asked the parties to work out their respective alternative remedies under law. Therefore, the dispute was raised before the Labour Court and the Labour Court declined to interfere on the ground that the High Court had already decided the matter. Again, the Respondents No. 2 and 3 approached the High Court for appropriate reliefs. The High Court set aside award passed by the Labour Court and remitted the matter to the Labour Court for fresh consideration on the merits of the matter. The Labour Court examined the matter on merits and came to conclusion that the termination of services of Respondents No. 2 and 3 is invalid and directed reinstatement with certain directions in relation to backwages. Though the services of the Respondents No. 2 and 3 were terminated, the parties concerned invoked jurisdiction of the Labour Court and the Labour Court directed their reinstatement and they were reinstated from the date of termination itself.

17. In the present case as stated earlier, initially the Party-I had invoked jurisdiction of the Authority prescribed u/s 40 of the Goa, Daman and Diu Shops and Establishments Act, 1973. The dispute came to be settled

there only in respect of the reinstatement of Party-I on condition that the Party-I should furnish Indemnity bond with sureties. Both parties under the settlement agreed to refer dispute in respect of wages of Party-I for the period commencing from the date of his termination till the date of joining the duties, and therefore, the reference came to be made to this Tribunal for adjudication. This fact is clearly distinguishable from that which is from reported case placed before me by Learned Advocate of Party-II. Once the Party-II agreed for such reference, now, it cannot say that the reference/dispute is not maintainable in the Industrial Tribunal. The Party-II cannot approbate and reprobate on the same issue. Learned Advocate of the Party-II did not place before me anything to show that the Maharashtra Co-operative Societies Act, 1960 and the Rules made there under applicable to the State of Goa do not permit for such a reference under the settlement. Section 40 of the Goa, Daman & Diu Shops and Establishments Act, 1973 also does not put embargo for making such reference by way of settlement before the Prescribed Authority. Arguments advanced by Learned Advocate of the Party-II must fail.

18. It is proved that the Party-II is an industry and that the dispute between the parties is an industrial dispute. Section 10(2) of the said Act, 1947 lays down that:

*"Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, [Labour Court Tribunal or National Tribunal], the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly."*

19. The above provision makes it obligatory on the Government to make a reference of an industrial dispute if the parties to that dispute apply in the prescribed form. In other words, in the event of the parties themselves applying for a reference of an industrial dispute, the Government is divested of the discretion as to whether it should refer the dispute or not. In the present case, there was no application by the parties with a prayer to make reference. What they have done is that, they entered into settlement before the Prescribed Authority for making reference. Before making reference, the Government considered the question as to whether there is an industrial dispute between the parties and satisfied that the persons applying represent the majority of each party. In view of this position and above discussion, I agree with the argument advanced by the Learned Advocate for Party-I. My answer to the issue is in the affirmative.

20. *Issue No. 4:-* The Party-I was working as a Weighman under employment of Party-II since the year 1965 without specifying service conditions. The Party-II issued a circular in the year 1980 and called upon its all employees to furnish indemnity bond of

Rs. 5000/- each, with two sureties. The circular which is notice dated 14-12-80 is produced at Exb. E-I. All the employees were directed to furnish indemnity bonds with sureties till 28-12-80.

21. It appears from evidence of Party-I and which is at Exb. 8 that he requested by sending letter dated 21-2-1981 to the Party-II to supply copy of the notice. Copy of the letter is at Exb. W-3. The Party-II did not comply with request made in the letter. Therefore, he did not furnish indemnity bond. Again, he sent a letter to the Party-II on 11-2-81 in connection with indemnity bond. He received reply dated 14-2-81 from the Party-II where under he was informed that he did not furnish the indemnity bond and therefore, the Party-II was free to take appropriate action against him. Copy of the reply dated 14-2-81 is at Exb. W-4. The Party-II issued show cause notice on 13-5-1981 against him. Copy of the show cause notice is at Exb. W-5. He was called upon to show cause as to why his services should not be terminated for misconduct. Xerox copy of the reply is produced by him at Exb. W-6.

22. Further, it appears from evidence of the Party-I that the Party-II by issuing order dated 6-6-81 terminated his services w.e.f. 6-7-81. Xerox copy of the order is at Exb. W-7. He received another order dated 3-7-81 from the Party-II. By this another order he was informed that the order of termination of his services w.e.f. 6-7-81 is stayed. Xerox copy of the order which is infact letter, is produced at Exb. W-8. Xerox copy of reply given by him on 3-7-81 is at Exb. W-9. The Party-II again issued show cause notice on 5-8-81. Xerox copy of the show cause notice is produced by him at Exb. W-12. Xerox copy of reply given by him to this show cause notice is at Exb. W-13. The Party-II by order dated 8-8-81 terminated his services w.e.f. 9-9-81. Xerox copy of the termination order is at Exb. W-14. The Party-II neither held inquiry nor paid compensation and other dues before terminating his services.

23. Umesh Naik who was working as Secretary of the Party-II during period from the year 1979 till the year 1986 is examined for and on behalf of Party II at Exb. E-9. He pointed out in his evidence that accounts of the Party-II for period from 1-7-77 to 30-6-78 are audited by V. B. Prabhugaonkar, the Special Auditor from office of the Registrar for Co-operative Societies. The Special Auditor has noted in the audit report that the bonds of Rs. 2000/- each, which were already taken from the employees of the Party-II are of very less amount. The Special Auditor suggested to increase the amount of bonds. Therefore, the Party-II called upon its all employees to furnish fresh indemnity bonds of Rs. 5000/- each. All the employees, except the Party-I furnished bonds.

24. It is admitted fact that the Party-I was working as a Weighman with the Party-II from the year 1965. He did not furnish indemnity bond of Rs. 5000/- with two sureties. Therefore, the Party-II terminated his services by order dated 8-8-1981. Learned Advocate appearing

on behalf of Party-I pointed out in his argument that if the employer wants to make change in service conditions, it is necessary that the employer should issue notice u/s 9-A of the said Act 1947. The employer, i.e. the Party-II by calling upon its employees including the Party-I directed to furnish indemnity bond of Rs. 5000/- each with two sureties instead of bond of Rs. 2000/- each which were already furnished by all employees including Party-I. This amounts to change in service conditions. The Party-II did not issue notice as required u/s 9-A of the said Act, 1947. Action taken by the Party-II without making proper compliance with mandatory provision, cannot be said to be legal and valid. On this ground he claimed that termination of services of the Party-I by the Party-II is illegal and unjustified. He relied upon decision given by the Hon'ble High Court of Judicature at Bombay in the case of *Bombay Mothers & Children's Society, Petitioner v. General Labour Union and anr. Respondents reported in 1992, 1 CLR, 656.*

25. In the reported case which is referred to above, wages were paid to employees at the rate at which employees of State Government Hospital were paid till May, 1977. Thereafter, wages were paid in accordance with Minimum Wages Act, 1947. The Hon'ble High Court held that the change brought about by the Petitioners was in respect to the wages and allowances payable to its employees and it was without giving notice as required u/s 9-A of the I. D. Act, 1947.

26. Relevant portion of Section 9-A of the said Act, 1947 lays down that:

*"No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—*

- (a) *Without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or*
- (b) *within twenty-one days of giving such notice. "*

27. From the above provision, it becomes apparent that if there is change in the service conditions specified in the Fourth Schedule, then and then only notice to the concerned workman is necessary. To call upon employees to furnish indemnity bond is not a condition under the Fourth Schedule. I, therefore, hold that notice as required u/s 9-A of the said Act, 1947 to the Party-I was not necessary before he was called upon to execute fresh indemnity bond. In addition, it is his case that he was appointed without specifying service conditions. When it was so, then it is not open for him to say that the Party-II by calling him upon to execute fresh indemnity bond, has effected change in service condition. The change was brought about by the Petitioner in the reported case of *Bombay Mothers and Children's Society,*

alluded Supra, was in respect of the conditions relating to wages and allowances covered by the Fourth Schedule. This is the main distinguishable fact, as a result, I am of the opinion that the decision relied upon by the Learned Advocate is not applicable to the present case. I do not agree with the argument advanced by him and which relates to change of service condition of Party-I.

28. Next contention which is pressed into service by the Learned Advocate of the Party-I is that there is nothing on record to hold that it is obligatory on part of the employee to furnish indemnity bond with sureties. It is also not known on which basis the Special Auditor has given direction in the audit report that the Party-II should increase amount of the bonds. There is no rule which requires that the employees should furnish indemnity bond with sureties. Therefore, according to him, even though the Party-I did not furnish the indemnity bond with sureties, it cannot be said that the Party-I has committed disobedience of order issued by the Party-II. In this context, he relied upon decision from case of Northern Railway Co-operative Credit Society Ltd., Jodhpur and another published in 1950-83 Vol. 4, S.C.L.J., 122. In this reported case, there was nothing to indicate that there were any rules of the society under which the employee concerned was required to obey the orders given by the Honorary Secretary of the Society to appear for the medical examination by particular doctor nominated by him. It is held that in the absence of any rules, the employee could very well feel justified in relying on certificates obtained by him from a registered medical practitioner and that the charge of disobedience of orders which were not enforceable under any rule could neither be the basis of any order of dismissal or removal, nor could it lead to any inference that the employee had merely been pretending to be sick.

29. Xerox copy of the audit report for the period from 1-7-1977 to 30-6-1978 is produced at Exb.E-6. The Special Auditor in page 9 of the audit report has noted that the bonds of Rs. 2000/- each taken from the employees are of very less amount considering day to day transaction and total price of daily goods which remain in balance everyday with the Party-II. Therefore, he has suggested to get amount of the bonds increased. It is true that, it is not known on which basis the Special Auditor has given suggestion to the Party-II. However, it should be remembered that what he has suggested is after taking into consideration daily transactions of the Party-II and total price of goods which remain in balance everyday. In absence of explanation, it will not be correct to jump to the conclusion that what is suggested by the Special Auditor is without basis. The suggestion given by him is during course of the audit and during discharge of his official duty. In compliance to this suggestion, the Party-II called upon its all employees including the Party-I to furnish indemnity bonds of Rs. 5000/- each with two sureties. Decision relied upon by the Learned Advocate of Party-I from the case of Northern Railway Co-operative Credit Society referred to above is not applicable. I do not agree with his argument.

30. Relevant portion of Sec. 39(1) of Goa, Daman & Diu Shops & Establishments Act, 1973 provides that:

*"No employer shall without a reasonable cause and except for misconduct, terminate the service of an employer who has been in his employment continuously for a period of not less than six months without giving such employee, at least one month's notice in writing or wages in lieu thereof and a gratuity amounting to fifteen day's average wages for each year of continuous employment."*

31. From the above provision, it can safely be concluded that if the employee is terminated from service for misconduct, then in that case one month's notice in writing or payment of wages in lieu thereof and of gratuity amount is not necessary. The Party-I did not obey orders of the Party-II to furnish indemnity bond of Rs. 5000/- each, with two sureties. The Party-II treated it as disobedience resulting into misconduct on part of the Party-I, and therefore, the Party-II terminated his services. Willful insubordination or disobedience is misconduct on part of the employee as provided under Rule 22 of the Goa, Daman & Diu Shops & Establishments Rules, 1975. The Party-I willfully disobeyed the Order of the Party II to furnish indemnity bond with sureties as stated earlier. I, therefore, hold that it is a misconduct on his part. Giving of one month's notice in writing or payment of wages in lieu thereof and of a gratuity amount is not necessary so far his case is concerned. I do not agree with the submission made by Learned Advocate of Party-I that the Party-II terminated services of the Party-I by committing breach of provision contained in Sec. 39(1) of Goa, Daman & Diu Shops & Establishments Act, 1973.

32. Sec. 39(4) of the said Act, 1973 lays down that:

*"The services of an employee shall not be terminated for misconduct except for such acts or omissions and in such manner, as may be prescribed"*

33. Rule 23 (1) of the Goa, Daman & Diu Shops & Establishments Rules, 1975 lays down that—

*"No employer shall terminate the service of an employee under section 39 unless an enquiry is held against the employee concerned in respect of any alleged misconduct in the manner set forth in sub rule (2)".*

34. Sub-Rule (2) referred to above, lays down the procedure of enquiry against the concerned employee. The Party-II did not hold enquiry against the Party-I before terminating services of the Party-I. This is clearly in contravention of the provision contained in Rule 23(1) of the said Rules, 1975. Only on this ground, I hold that, termination of services of Party-I by the Party-II is illegal. I, therefore, answer the issue in affirmative.

35. Issue No. 5: The Party-I in his claim statement has prayed for declaration that the action of the Party-II in terminating his service is illegal and unjustified, and

that he is entitled for full backwages and other benefits. The reference which is made by the Government of Goa under its order dated 20-4-1992 is only in respect of the question as to whether the Party-I is entitled for wages for the period commencing from the date of his termination of service i.e. w.e.f. 9-9-1981 to the date of joining the duties.

36. The Party-I is reinstated in service w.e.f. 1-1-1992. Termination of his service is proved to be illegal and unjustified. In view of provision contained in Sec. 11(A) of the said Act, 1947, and considering scope of the reference, I hold that the Party-I is entitled for wages for the period commencing from the date of his termination of services to the date of joining the duties. I answer the issue accordingly.

37. As a result of findings given to issue No. 5, I proceed to adjudicate the reference by passing order as follows:

#### ORDER

1. The reference is adjudicated as follows:

The Party-I, Sagun N. Naik, Weighman, employed by Party-II, M/s Ponda Consumers Co-operative Societies Ltd., Ponda, is entitled for wages for the period commencing from the date of his termination of service i.e. w.e.f. 9-9-1981 to the date of joining the duties i.e. 1-1-1992.

2. No order as to costs.

3. The Award be submitted to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-  
(Dilip K. Gaikwad),  
Presiding Officer  
Industrial Tribunal-  
-Cum-Labour Court.

#### Department of Law & Judiciary

Law (Establishment) Division

#### Notification by the High Court of Judicature Appellate Side, Bombay

No. A. 3918/G/2007

In exercise of the powers conferred by Section 260 (1)(c) of the Code of Criminal Procedure, 1973 (No. 2 of 1974), the Hon'ble the Chief Justice and Judges, hereby invest following Judicial Officers with the summary powers:-

Sr. No.	Name of the Judicial Officers
1	2

- Shri S. J. Natekar,  
Civil Judge, S. D. & JMFC.

1	2
2.	Shri V. S. R. Dessai, Civil Judge, S. D. & JMFC.
3.	Shri D. D. Dhumaskar, Civil Judge, S. D. & JMFC.
4.	Shri P. M. Shinde, Civil Judge, S. D. & JMFC.
5.	Shri C. Fernandes, Civil Judge, S. D. & JMFC.
6.	Smt. Sayonara Laad, Civil Judge, S. D. & JMFC.
7.	Ms. Vandana M. Prabhu-Tendulkar, Civil Judge, S. D. & JMFC.
8.	Shri Vincent M. D'Silva, Ad hoc Civil Judge, S. D. & JMFC.
9.	Shri Ashley L. C. Noronha, Ad hoc Civil Judge, S. D. & JMFC.
10.	Kum. Vijaya V. Ambre, Ad hoc Civil Judge, S. D. & JMFC.
11.	Smt. Kshama M. Joshi, Ad hoc Civil Judge, S. D. & JMFC.
12.	Ms. Bela N. Naik, Ad hoc Civil Judge, S. D. & JMFC.
13.	Smt. Durga V. Madkaikar, Ad hoc Civil Judge, S. D. & JMFC.
14.	Smt. Kalpana V. Gavas, Civil Judge, J. D. & JMFC.
15.	Shri S. V. Parab, Civil Judge, J. D. & JMFC.
16.	Smt. Shabnam Shaikh, Civil Judge, J. D. & JMFC.
17.	Shri Cholu M. Gauns, Civil Judge, J. D. & JMFC.
18.	Shri D. M. Kerkar, Civil Judge, J. D. & JMFC.

High Court, Bombay

Smt. R. P. Sondur Baldota,  
Registrar General.

Dated: 29th June, 2007.

#### Department of Personnel

#### Order

No. 3/23/93-PER(PF)

In pursuance of the Government of India, Ministry of Environment & Forests, New Delhi, order No. 22011/1/2002-IFS-I (Pt.) dated 17-05-2007, the Governor of Goa is pleased to relieve Shri Rajesh, IFS (AGMUT: 88), Deputy Conservator of Forests, North Goa Division, Ponda-Goa with immediate effect from this Administration, to enable him to join in Arunachal Pradesh in the grade of Conservator of Forests.



He shall hand over the charge of the post of Deputy Conservator of Forests, North Goa Division, Ponda-Goa to the Chief Conservator of Forests.

### Order

No. 7/2/95-PER

The Governor of Goa is pleased to transfer Shri Bhaskar Nayak, Principal, Government College of Arts and Science, Quepem and post him as Director of Higher Education, Panaji, with immediate effect, thereby relieving Dr. Arthur Gomes, Principal, Government College, Pernem, of the additional charge.

Shri Bhaskar Nayak, shall continue to hold the charge of the post of Principal, Government College of Arts and Science, Quepem, in addition to his own duties, until further orders.

By order and in the name of the Governor of Goa.

*Yetindra M. Maralkar*, Joint Secretary (Personnel).

Porvorim, 10th July, 2007.

### Order

No. 4/2/85-PER(PF.)

Read:- i) Order No. 4/12/85-PER (P.F.) dated 07-09-2006.

ii) Order No. 4/12/85-PER (PF.II) dated 20-12-2006.

Governor of Goa is pleased to repatriate Shri S. S. P. Tendulkar, Programme Coordinator, Krishi Vigyan Kendra, Margao, to his regular post of Director of Agriculture with immediate effect thereby relieving Shri P. P. Kumbhare, Deputy Director (Agriculture) of the additional charge of Director of Agriculture from the date of joining of Shri S. S. P. Tendulkar.

Shri P. P. Kumbhare, Deputy Director (Agriculture), is transferred and posted as Programme Coordinator, Krishi Vigyan Kendra, Margao, on deputation in place of Shri S. S. P. Tendulkar, with immediate effect.

By order and in the name of the Governor of Goa.

*U. L. Joshi*, Under Secretary (Personnel-I).

Porvorim, 6th July, 2007.

### Memorandum

No. 5/40/84-PER(Vol.I)

Read:- Memorandum No. 5/40/84-PER- (Vol.I) dated 04-04-2007.

The tentative Seniority list of the Principal, Government Polytechnic was circulated to all concerned vide Memorandum referred to above inviting their objections, if any.

Since no objections have been received from both the incumbents, the final seniority of Principal Government Polytechnic shall be as under:-

Sr. No.	Name of the Principal Government Polytechnic	Date of regular appointment
1.	Shri Vivek B. Kamat	18-11-1998
2.	Shri Subhash P. Borkar	08-08-2005

*U. L. Joshi*, Under Secretary (Personnel-I).

Porvorim, 6th July, 2007.

### Order

No. 6/1/2006-PER

The Governor of Goa is pleased to promote Smt. Florina Colaco, Mamlatdar/Joint Mamlatdar Assistant Director of Civil Supplies, incumbent of the posts included in the Schedule-II of the Goa Civil Service Rules, 1997, to Junior Scale of the same Service, on ad hoc basis, in the pay scale of Rs. 8000-275-13500 with immediate effect.

2. The appointment of Smt. Colaco shall be for a period of one year in the first instance.

3. The above ad hoc appointment will not bestow the promoted officer any claim for regular appointment in the service rendered on ad hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotions to the next higher grade.

4. The posting order will be issued separately. Till such time, she shall continue to hold the present post.

By order and in the name of the Governor of Goa.

*Yetindra M. Maralkar*, Joint Secretary (Personnel).

Porvorim, 9th July, 2007.

### Department of Revenue

### Notification

No. 22/21/2007-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition for a Playground-cum-Sports Complex at Margao.

Now, therefore, the Government hereby notifies, under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as the "said Act") that the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise, or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this Notification, will under clause (seventh) of Section 24 of the said Act, be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints, under clause (c) of Section 3 of the said Act, the Deputy Collector (L.A.), South Goa District, Margao-Goa to perform the functions of a Collector under the said Act in respect of the said land.

5. The Government also authorises under sub-section (2) of Section 4 of the said Act, the following Officers to do the Acts, specified therein in respect of the said land.

1. The Collector, South Goa District, Margao-Goa.
2. The Deputy Collector (L.A.), South Goa District, Margao-Goa.
3. President, Vidya Vikas Mandal's Govind Ramnath Kare College of Law, Tansor, Comba, Margao-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Deputy Collector (L.A.), South Goa District, Margao-Goa for a period of 30 days from the date of publication of this Notification in the Official Gazette.

#### SCHEDULE

(Description of the said land)

Taluka: Salcete		City: Margao
P. T. Sheet No./ Chalta No./ Sub. Div. No.	Names of the persons believed to be interested	Area in sq. mts.
1	2	3
212/2/5	H: Comunidade of Margao. T: Augustino Fernandes.	556

1	2	3
212/1/2	H: Comunidade of Margao. T: Francis Rodrigues.	5307
235/1/1	H: Comunidade of Margao. T: Remeth Fernandes.	2650
235/1/2	H: Comunidade of Margao. T: Agustin Fernandes.	2594
235/1/3	H: Comunidade of Margao. T: Not known.	1600
212/4 (part)	H: Maria Alba Mirza Mascarenhas e Rodrigues.	1500

#### Boundaries:

North : P.T.S. No. 212/1/1

P.T.S. No. 212/2/4,6.

South : Nala & S. No. 234/1.

East : Nala & S. No. 234/1, 2 & 33.

West : Nala.

Total: 14,207

By order and in the name of the Governor of Goa.

V. S. N. Gaunekar, Under Secretary (Revenue-I).

Porvorim, 10th July, 2007.



### Department of Sports & Youth Affairs

Directorate of Sports & Youth Affairs

#### Order

No. 8/10/2005/Promotion/GPSC/DSYA/1510

On the recommendation of the Goa Public Service Commission conveyed vide their letter No. COM/II/11/45(1)/96/162 dated 21-6-07, Government is pleased to promote Smt. Juliana Gurjao e Colaco, Asstt. Physical Education Officer to the post of Asstt. Director (Projects) Group 'B' Gazetted in the pay scale of Rs. 6500-200-10500 and Shri Ashok S. Gaonkar, Asstt. Physical Education Officer to the post of Asstt. Director (Sports) Group 'B' Gazetted in the pay scale of Rs. 6500-200-10500 on regular basis with immediate effect in the Directorate of Sports & Youth Affairs.

They shall be on probation for a period of two years.

By order and in the name of the Governor of Goa.

Dr. Susana de Souza, Director of Sports & Youth Affairs and Joint Secretary (ex officio).

Panaji, 2nd July, 2007.

[www.goagovt.nic.in/gazette.htm](http://www.goagovt.nic.in/gazette.htm)

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